

**ORDINANCE NO. 1
SERIES 2011**

AN ORDINANCE AMENDING CHAPTER 4.10 OF THE GUNNISON MUNICIPAL CODE RELATING TO MUNICIPAL COURT, AMENDING CHAPTER 5.10 OF THE GUNNISON MUNICIPAL CODE RELATING TO GENERAL OFFENSES, AND AMENDING CHAPTER 5.40 OF THE GUNNISON MUNICIPAL CODE RELATING TO ANIMALS.

WHEREAS, city staff has recommended changes to Chapter 4.10, Municipal Court, Chapter 5.40, Animals and Chapter 5.10, General Offenses, of the Gunnison Municipal Code (G.M.C.); and

WHEREAS, the City wishes to protect the community by modifying the City of Gunnison Municipal Code; and

WHEREAS, the City Council finds that such changes would benefit the health, safety and welfare of the City's residents and, therefore, is in the City's best interest.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF GUNNISON, COLORADO, ORDAINS THAT:

Section 1. G.M.C. Section 4.10.050, Court costs, is amended to read as follows:

4.10.050 Court costs.

The municipal court judge is empowered and directed to assess court costs, in the amount of \$20.00, against any defendant who is found guilty of an ordinance violation, or City Charter violation, either after a plea of guilty or nolo contendere, or who enters into a plea agreement, or who after trial is found guilty of an ordinance or Charter violation. In addition to any other court costs and fees, the municipal court judge is empowered and directed to impose a \$50.00 administration fee for each deferred judgment or deferred prosecution agreement approved by the municipal court for an ordinance or City Charter violation. In addition to any costs and fees ordered, the municipal court judge may assess costs of incarceration, to include charges by the jail facility to the City of Gunnison for the housing, care or treatment of the defendant while incarcerated. Costs shall be limited to those amounts actually incurred by the City.

Section 2. G.M.C. Chapter 4.10, Municipal Court, is amended by the addition of Section 4.10.080 as follows:

Section 4.10.080 Restitution.

Any order of a conviction of any offense set forth in the Gunnison Municipal Code may include consideration of restitution.

A. Any such restitution order shall include:

1. An order of a specific amount of restitution be paid by the defendant; or
2. An order that the defendant is obligated to pay restitution but that the specific amount of restitution shall be determined within ninety days immediately following the order of conviction, unless good cause is shown for extending the time period by which the restitution amount shall be determined.

B. "Conviction" means a verdict of guilty by a judge or jury or a plea of guilty or nolo contendere that is accepted by the court for a violation of any provision of the Gunnison Municipal Code. "Conviction" also includes having received a deferred judgment and sentence or deferred adjudication; except that a person shall not be deemed to have been convicted if the person has successfully completed a deferred sentence or deferred adjudication.

- C. "Restitution" means any quantifiable pecuniary loss suffered by a victim or by the City of Gunnison that relates to a violation of the Gunnison Municipal Code for which the defendant has pled guilty or nolo contendere, including guilty pleas relating to deferred sentences, or for which a defendant has been found guilty by the Court. "Restitution" does not include damages for physical or mental pain and suffering, loss of consortium, loss of enjoyment of life, loss of future earnings, or punitive damages. "Restitution" shall also include all costs incurred by a government agency relating to any clean-ups related to a nuisance violation, or costs relating to housing an animal in a shelter, whether the shelter is a public or private animal shelter.
- D. Any order for restitution entered pursuant to this section shall be a final civil judgment in favor of the City of Gunnison and any victim. Notwithstanding any other civil or criminal statute or rule, any such judgment shall remain in force until the restitution is paid in full.

Section 3. G.M.C. Section 5.10.010, Definitions, is amended by the addition of AA., Criminal negligence, as follows:

- AA. "Criminal negligence" means a person acts with criminal negligence when, through a gross deviation from the standard of care that a reasonable person would exercise, he fails to perceive a substantial and unjustifiable risk that a result will occur or that a circumstance exists.

Section 4. G.M.C. Section 5.10.120, Harassment, is amended to read as follows:

5.10.120 Harassment.

- A. No person shall, with the intent to harass, alarm or annoy another, strike, shove, kick, or otherwise touch or subject an individual to physical contact.
- B. No person shall, with the intent to harass, alarm or annoy another, initiate communication with a person, anonymously or otherwise, by telephone, telephone network, data network, text message, instant message, computer, computer network, or computer system in a manner intended to harass or threaten bodily injury or property damage, or make any comment, request, suggestion, or proposal by telephone, computer, computer network, or computer system that is obscene.
- C. No person shall, with the intent to harass, alarm or annoy another, make a telephone call or cause a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation.
- D. No person shall, with the intent to harass, alarm or annoy another, make repeated insults, taunts, challenges, or other communications in offensively coarse language to, another in a manner likely to provoke a violent or disorderly response.
- E. No person shall, with intent to harass, alarm or annoy another, while in a public place, direct obscene language at, make obscene gestures to, or follow another person.
- F. No person shall make repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property.
- G. As used in this section, unless the context otherwise requires, "obscene" means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus, or excretory functions.

H. Harassment is a misdemeanor.

Section 5. G.M.C. Section 5.10.260, Weapons Offenses, is amended to read as follows:

5.10.260 Weapon offenses.

- A. No person shall discharge any firearm, air gun, BB gun, slingshot, bow, or any toy gun projecting lead or any missiles recklessly or with criminal negligence.
- B. No person shall carry any firearm, whether loaded or not, into any premises licensed to sell alcoholic beverages.
- C. No person shall carry any weapon into any building housing government offices and having a sign posted prohibiting such weapons near the entrance.
- D. It shall not be an offense under paragraph B or C, if:
 - 1. The weapon is brought into a building, housing a law enforcement agency, for the purpose of turning the item into that agency or while in the process of leaving the building, after claiming an item. In all cases the item will be unloaded, cased or by some other means made safe to handle.
 - 2. The weapon is being brought into the facility for a scheduled event or activity where the item is allowed and the person responsible for the facility is aware of the event.
 - 3. The person is legally authorized to carry a concealed handgun and acting in accordance with state law pertaining to permitted carry and the handgun is concealed.
- E. Nothing in this section shall prohibit a law enforcement officer from carrying a weapon or firearm, or discharging a weapon or firearm, in the lawful performance of his/her duties.
- F. Weapons offenses are misdemeanors.

Section 6. G.M.C. Section 5.10.290, Penalties, is amended to read as follows:

5.10.290 Penalties.

- A. Upon conviction of an offense set forth in this chapter which is classified as a misdemeanor, a person shall be fined in a sum not to exceed \$1,000 for any one offense or imprisoned for a period not exceeding 90 days, or both such fine and imprisonment.
- B. Upon conviction of an offense set forth in this chapter which is classified as a petty offense, a person shall be fined in a sum not to exceed \$100 for any one offense.
- C. Upon conviction for any offense set forth in this chapter, in addition to any fine or imprisonment, a person may be required to perform useful public service or such other sanction as deemed appropriate by the Court.

Section 7. G.M.C. Section 5.40.080, Enforcement and penalties, is amended to read as follows:

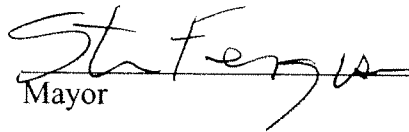
5.40.080 Enforcement and penalties.

- A. Enforcement – General Procedures. Whenever there is any violation of any provisions of this chapter, the animal control officer, any police officer, or authorized licensing authority agent finding such violation may, except as otherwise provided herein, issue a summons and complaint or citation to the owner of or person responsible for the animal to appear in municipal court. Any hearing on the summons and complaint or citation shall be held no sooner than five days after the notice without the consent of the person to whom the summons and complaint or citation was issued.
- B. Penalties.
 - 1. Nuisance and Animal at Large Violations. Any person found guilty of permitting an animal to be at large, as defined in GMC 5.40.050(A), or a nuisance as defined in GMC 5.40.060 shall be fined:
 - a. Upon presentation to the court of sufficient evidence the animal has been sterilized:
 - i. Not less than \$15.00 nor more than \$1,000 for the first offense;
 - ii. Not less than \$25.00 nor more than \$1,000 for the second offense within a 12-consecutive-month period;
 - iii. Not less than \$50.00 nor more than \$1,000 for all offenses subsequent to the second within a 12-consecutive-month period; in addition to or in lieu of the foregoing, the defendant may be ordered to remove such animal permanently from the municipality within 24 hours. Refusal or failure to comply may result in impoundment and disposal of the animal. In addition to or in lieu of any of the foregoing, the defendant may be sentenced to up to 90 days in jail; or
 - b. When no sufficient evidence is presented to the court that the animal has been sterilized:
 - i. Not less than \$30.00 nor more than \$1,000 for the first offense;
 - ii. Not less than \$50.00 nor more than \$1,000 for the second offense within a 12-consecutive-month period;
 - iii. Not less than \$100.00 nor more than \$1,000 for the third offense within a 12-consecutive-month period; in addition to or in lieu of either of the foregoing, the defendant may be ordered to remove such animal permanently from the municipality within 24 hours. Refusal or failure to comply may result in the impoundment and disposal of the animal. In addition to or in lieu of any of the foregoing, the defendant may be sentenced to up to 90 days in jail.
 - 2. Vicious Animal Violations. Any person found guilty of keeping or maintaining a vicious animal as defined by GMC 5.40.050(B)(1) may be:
 - a. Fined not less than \$25.00 nor more than \$1,000; and

- b. Ordered to have such animal destroyed within such period of time as ordered by the Court.
 - c. In addition to or in lieu of the foregoing, the defendant may be sentenced to up to 90 days in jail.
3. In addition to any other penalties set forth in this section, the Court may impose additional terms or conditions as the Court deems appropriate.

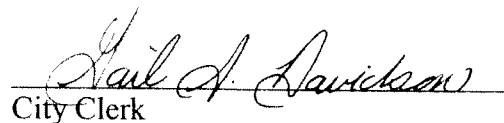
Section 8. If any section of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or the constitutionality of the remaining portions of the ordinance. The City Council of the City of Gunnison hereby declares that it would have passed this ordinance, and each section thereof, irrespective of the fact that any one or more sections be declared unconstitutional.

INTRODUCED, READ, PASSED, AND ORDERED PUBLISHED this 25th day of January, 2011, on first reading, and introduced, read, and adopted on second and final reading this 8th day of February, 2011.


Mayor

(SEAL)

ATTEST:


City Clerk

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